

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re: Local TV Advertising) Docket No. 18 C 06785
Antitrust Litigation)
)
) Chicago, Illinois
) November 19, 2018

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VIRGINIA M. KENDALL

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1 (Proceedings heard in open court:)

2 THE CLERK: In Re. Local TV Advertising, 18 C 6785.

3 THE COURT: Oh, we either have a patent case or an
4 MDL, right?

5 (Laughter.)

6 THE COURT: My goodness.

7 Well, good morning, everyone.

8 MULTIPLE COUNSEL: Good morning, your Honor.

9 THE COURT: This is my first MDL. And it's just a
10 little itty-bitty baby one, they tell me, so ...

11 (Laughter.)

12 THE COURT: They used to call me and ask me if I would
13 take them, and I always said, "Oh, I'm not really that
14 interested." Finally, I said, "I'm interested," and look what
15 happened.

16 (Laughter.)

17 THE COURT: All right. So I guess we'll get
18 everybody's name on the record, right?

19 So let's start by this table.

20 Mr. Clifford, maybe you can start, and we'll go
21 around.

22 MR. CLIFFORD: Thank you, your Honor. Good morning.
23 Robert Clifford. And my partner Shannon McNulty.

24 MS. McNULTY: Good morning, your Honor.

25 THE COURT: No, you stand up and introduce yourself.

1 Women introduce themselves in Judge Kendall's
2 courtroom.

3 MS. McNULTY: Good morning, your Honor. Shannon
4 McNulty on behalf of O'Neil Toyota.

5 THE COURT: Okay. Good morning.

6 MR. LEVITT: Good morning, your Honor. Adam Levitt on
7 behalf of The Bon-Ton Stores.

8 THE COURT: Okay. Good morning.

9 MS. GARVEY: Good morning, your Honor. Karin Garvey
10 from Labaton Sucharow, also on behalf of The Bon-Ton Stores.

11 THE COURT: Good morning.

12 MS. KATCHER: Good morning, your Honor. Elana Katcher
13 from Kaplan, Fox & Kilsheimer on behalf of Crowley Webb and
14 Associates.

15 THE COURT: Okay. Good morning.

16 MS. OLIVER: Good morning, your Honor. Jennifer
17 Oliver, MoginRubin, on behalf of The Barnes Firm.

18 MR. WILLIAMS: Good morning, your Honor. My name is
19 Steve Williams of the Joseph Saveri Law Firm. My client is
20 Holmen Meat Locker.

21 THE COURT: Okay. Good morning.

22 MS. SRINIVASAN: Good morning, your Honor. Kalpana
23 Srinivasan of Susman Godfrey representing plaintiff Mowrer for
24 Iowa.

25 THE COURT: Good morning.

1 MS. M. JONES: Good morning. Megan Jones from
2 Hausfeld, LLP representing Randal S. Ford today.

3 THE COURT: Good morning.

4 MS. SCHARF: Good morning, your Honor. Stephanie
5 Scharf from Scharf Banks Marmor representing Randal S. Ford.

6 THE COURT: Good morning.

7 MS. SIMS: Good morning, your Honor. Victoria Sims
8 from Cuneo Gilbert & LaDuca, and I represent John O'Neil
9 Johnson Toyota.

10 THE COURT: Okay. Good morning.

11 Let's start over here then with this table. Stand up,
12 please. Thanks.

13 MR. FORTINSKY: Good morning, your Honor. Jerry
14 Fortinsky from Shearman and Sterling in New York on behalf of
15 Sinclair Broadcast Group.

16 THE COURT: Good morning.

17 MR. SCANDAGLIA: Good morning, your Honor. Greg
18 Scandaglia from Scandaglia Ryan, also on behalf of Sinclair
19 Broadcast Group.

20 THE COURT: Okay. Good morning.

21 MR. ADELSON: Eliot Adelson of Kirkland & Ellis for
22 Nexstar Media.

23 THE COURT: Okay.

24 MR. ANTIA: Good morning, your Honor. Mazda Antia
25 from Cooley for Gray Television.

1 MS. SPEARS: Good morning, your Honor. Natalie Spears
2 from Dentons on behalf of Hearst Television, local counsel.

3 THE COURT: Good morning.

4 MS. NORTH: Good morning, your Honor. Julie North
5 from Cravath Swaine & Moore on behalf of Hearst Television,
6 Inc.

7 THE COURT: Good morning.

8 MR. COHEN: Good morning, your Honor. Jay Cohen from
9 Paul Weiss for Tribune.

10 THE COURT: Good morning.

11 MR. BRICKER: Good morning, your Honor. Ross Bricker
12 from Jenner & Block on behalf of Tegna.

13 THE COURT: Okay. Good morning.

14 MS. MORSE: Good morning. Rachel Morse from Jenner &
15 Block on behalf of Tegna.

16 THE COURT: Good morning.

17 MR. MERRICK: Good morning, your Honor. Andrew
18 Merrick with Jenner & Block, also on behalf of Tegna.

19 THE COURT: Good morning.

20 MR. MICHAEL: Good morning, your Honor. William
21 Michael of Paul Weiss on behalf of Tribune.

22 THE COURT: Okay. So, obviously, you've done this
23 before because I've got defendants sitting on one side in the
24 right spot.

25 Are these all attorneys here? Okay. Let's start back

1 there then.

2 MS. JUSTICE: Good morning, your Honor. Kimberly
3 Justice from Kessler Topaz Meltzer & Check on behalf of the Law
4 Offices of Peter Miller.

5 COURT REPORTER: Peter Miller did you say?

6 MS. JUSTICE: Yes.

7 THE COURT: How about this, Gayle? Why don't we take
8 the microphone and move it to the end of the table. Can we do
9 that? And then those people that are not near a microphone
10 could maybe walk over? Does it have enough of a cord?

11 That's great. Thank you.

12 MS. SALZMAN: Thank you, your Honor.

13 Hollis Salzman --

14 THE COURT: Wait, it's not on. Hang on. I've got to
15 play with it.

16 UNIDENTIFIED SPEAKER: This one works.

17 THE COURT: She's turning it on. Okay. There you go.

18 MS. SALZMAN: Hollis Salzman from Robins Kaplan on
19 behalf of Clay, Massey & Associates.

20 THE COURT: Okay. Good morning.

21 MS. WEAVER: Good morning, your Honor. Lesley Weaver
22 of Bleichmar Fonti and Auld on behalf of One Source Heating and
23 Cooling.

24 THE COURT: Good morning.

25 MR. WOZNIAK: Good morning, your Honor. Robert

1 Wozniak, Freed Kanner London & Millen on behalf of Thoughtworx,
2 Inc.

3 THE COURT: Good morning.

4 MS. SAKETKOO: Good morning, your Honor. Eva Saketkoo
5 from Hearst Office, the general counsel for Hearst TV, Inc.

6 THE COURT: Got it. Good morning.

7 Anyone else over there?

8 MS. McCORMACK: Hi. Peter McCormack, Kirkland &
9 Ellis, for Nexstar.

10 THE COURT: Okay. Good morning.

11 MR. SZOT: Good morning, your Honor. Andy Szot from
12 Miller Law on behalf of Northtown Automotive.

13 THE COURT: Okay. Good morning.

14 MR. CALDES: Good morning, your Honor. Bill Caldes on
15 behalf of My Philly Lawyer from Spector Roseman & Kodroff.

16 THE COURT: Okay. Good morning.

17 MR. BLANCHFIELD: Good morning, your Honor. Garrett
18 Blanchfield from Reinhardt Wendorf & Blanchfield on behalf of
19 plaintiff Heglund Chwialkowski & Mrozik.

20 THE COURT: Good morning. Is that all of the -- oh,
21 no, you're coming up?

22 UNIDENTIFIED SPEAKER: There's plaintiffs on the other
23 side, so --

24 THE COURT: Okay, yes, that's fine. That's fine.
25 Because we have to get into the jury box next.

1 Do you have the jury turned on, by the way?

2 THE CLERK: I will double-check.

3 THE COURT: Yes, go look at the jury box mics. That
4 will help us.

5 Go ahead.

6 MR. AGRAWAL: Good morning, your Honor. Suyash
7 Agrawal, Massey and Gail, on behalf of Mowror For Treasurer.

8 THE COURT: Okay. Good morning.

9 MR. SPECKS: Good morning, your Honor. Gary Specks,
10 Kaplan Fox, on behalf of Crowley Webb and Associates.

11 THE COURT: Okay. Good morning.

12 All right. Everybody is over there.

13 Now let's turn -- let's turn -- hello. We can start
14 with you since you're standing there.

15 MR. BARZ: Good morning, your Honor. Jim Barz with
16 Robbins Geller on behalf of Masseys Jewelers. I lost the race
17 to the table, so I didn't know if you could see me.

18 THE COURT: Oh, that's fine. Good morning.

19 Let's start in the jury box. I think that there's
20 microphones that might pick you up. Okay?

21 MR. PROM: Good morning, your Honor. Adam Prom from
22 DiCello Levitt & Casey on behalf of The Bon-Ton Stores.

23 THE COURT: Good morning.

24 MS. KELLER: Good morning, your Honor. Amy Keller,
25 also DiCello Levitt & Casey, on behalf of Bon-Ton.

1 THE COURT: Good morning.

2 MR. ASCIOLLA: Good morning, your Honor. Greg
3 Asciolla from Labaton Sucharow on behalf of The Bon-Ton Stores.

4 THE COURT: Good morning.

5 MR. TANGREN: Good morning, your Honor.

6 THE COURT: They're okay, I think.

7 Gayle, are you hearing him? Or do you want the
8 hand-held?

9 COURT REPORTER: No, I can hear them. Thank you.

10 THE COURT: Okay. Got it.

11 MR. TANGREN: John Tangren, also of Dicello Levitt &
12 Casey, on behalf of Bon-Ton.

13 THE COURT: Good morning.

14 MS. BERNAY: Good morning, your Honor. Alexandra
15 Bernay from Robbins Geller on behalf of Masseys Jewelers.

16 THE COURT: Good morning.

17 MR. BURNS: Good morning, your Honor. Warren Burns
18 from Burns Charest on behalf of LM SAC.

19 THE COURT: Okay. Good morning.

20 MS. WILLIAMS: Good morning, your Honor. Jodie
21 Williams from MoginRubin on behalf of The Barnes Firm.

22 MR. WEXLER: Good morning, your Honor. Ken Wexler
23 from Wexler Wallace on behalf of the Dozier Law Firm.

24 THE COURT: Okay. Good morning.

25 MR. BOLEY: Good morning, your Honor. Justin Boley

1 from the Wexler Wallace law firm on behalf of the Dozier Law
2 Firm.

3 THE COURT: Okay.

4 MS. LOOBY: Good morning, your Honor. Michelle Looby
5 from Gustafson Gluek on behalf of the Dozier Law Firm and Curb
6 Appeals, LLC.

7 THE COURT: Good morning.

8 MR. HEDLUND: Good morning, your Honor. Dan Hedlund,
9 Gustafson Gluek, also on behalf of plaintiffs Curb Appeal and
10 Dozier Law.

11 THE COURT: Good morning.

12 MS. ANDERSON: Good morning, your Honor. Kristen
13 Anderson from Scott and Scott on behalf of plaintiff Kevin
14 Forbes.

15 THE COURT: Good morning.

16 And I got you already, Mr. Barz.

17 Okay. Anyone else that I didn't get?

18 And then I know there's some on the phone that we have
19 the list for, so we don't need to go through that because we
20 have the list, right?

21 THE CLERK: Correct.

22 THE COURT: Okay. Pardon?

23 THE CLERK: I put it up there for you, right there.

24 THE COURT: Oh, okay. But they -- but they're listen
25 only.

1 THE CLERK: They're just listening.

2 THE COURT: Okay. All right. Well, why don't I put
3 it, for the record, for you, Gayle, that we have Jennifer Jones
4 and Kellie Lerner or Clay, Massey & Associates.

5 We have Jacob Johnston for Nexstar Media Group.

6 We have Daniel Mogin from The Barnes Firm.

7 John Cieslak and Beatrice Mejia-Gray -- oh. I'm not
8 sure, it must be who the -- Gray Television, right? So it's
9 John Cieslak and Beatriz Mejia on behalf of Gray Television.

10 Bryan Caforio and Kalpana Srinivasan, Mowrer for Iowa.

11 I'll give you the list.

12 Christopher Cormier and Korey Nelson on behalf of S.
13 Chevrolet Cadillac and LM, SAC, LLC and S. Chevrolet Cadillac.

14 And Barbara Hart, Cellino & Barnes.

15 Okay? Do you have that list?

16 COURT REPORTER: I do, Judge.

17 THE COURT: Okay, great.

18 All right, folks. Well, start out with the
19 understanding that you've got a newbie on MDLs, but I've been
20 doing my research and reading and trying to get up to speed.
21 So I am not in any way embarrassed if you want to instruct me
22 on something. That is not the kind of judge I am. I don't
23 mind that at all. So I will not be offended if someone says,
24 "Well, this is really the proper way to go about business."

25 Something tells me with all of you in the room that

1 you won't all agree on the proper way --

2 (Laughter.)

3 THE COURT: -- to go about business.

4 Thank you for the joint status report. It's clear
5 that I need to get you your interim counsel.

6 I don't know if anyone has a position on this; but I
7 have seen in the past where sometimes those position papers,
8 you have a little bit of a three-minute presentation to the
9 Court. And I have no problem doing that.

10 Is that something that those who have put in for
11 counsel would be interested in?

12 UNIDENTIFIED SPEAKER: Yes, your Honor.

13 UNIDENTIFIED SPEAKER: Yes, your Honor.

14 THE COURT: Okay. I'll tell you what we're going to
15 have to do for Gayle is just state your name first and then say
16 yes.

17 MS. M. JONES: Megan Jones from Hausfeld.

18 THE COURT: Okay.

19 MS. M. JONES: That is an appropriate way to proceed,
20 your Honor.

21 THE COURT: Okay. Is there anyone who thinks that's a
22 bad idea?

23 (No affirmative response.)

24 THE COURT: Okay. So the next thing then is when.
25 And I know you're from all over the place. I'm actually going

1 to be out for a short -- a few weeks because I'm getting a new
2 knee immediately. And so December 19th is a day that I'm
3 coming back.

4 Is that a day that people might be able to consider?
5 And if -- is it too close to the holidays? Because I'm more
6 than willing to punt it into the new year if that's too close.

7 MR. LEVITT: Adam Levitt on behalf of The Bon-Ton
8 Stores.

9 I think the understanding among a lot of people in the
10 room that -- and we're all ready to go right now if your Honor
11 is ready to go.

12 THE COURT: Oh, I see. I don't know if I can fit it
13 today, but it would be nice if I could. I didn't realize that.
14 I'm sorry, I didn't realize that. Okay. Thank you.

15 Go ahead.

16 MR. BURNS: This is Warren Burns from Burns Charest,
17 your Honor. We're happy to come back in December if that fits
18 into your schedule.

19 THE COURT: Okay. So the other intriguing angle that
20 I have which is messing with the schedule today is that I have
21 a 34-defendant Latin Kings gang case scheduled for January, and
22 I gave the defendants kind of a date where I said you might not
23 get your last point for acceptance of responsibility once the
24 U.S. Marshal starts shipping in all these deputies from all
25 around the world and they're going to do that the day before

1 Thanksgiving. So guess what happened? I have ten changes of
2 plea tomorrow, and I have three today.

3 But let me just take a look and see how crazy this is
4 because -- if I give you just a few minutes, how many
5 applications do I have?

6 MS. M. JONES: Your Honor, Megan Jones.

7 It's less than ten. So if we did five minutes per
8 group, we could probably get it done in an hour.

9 THE COURT: That's good. That's very good.

10 All right. Let me see what I've got.

11 Do you have the schedule for today?

12 THE CLERK: I do, your Honor.

13 (Tendered.)

14 THE COURT: It's horrible. Okay.

15 All right. So I have a sentencing at 10:30 and then a
16 meeting and then -- then the changes of plea begin.

17 Well, can we do a little bit of state court feel and
18 start out at 12:30? And then if I have to take a change of
19 plea, we break for it, and then pick up again. Would anybody
20 be averse to that?

21 MR. WILLIAMS: Your Honor, Steve Williams.

22 I think that's fine. And I just wanted -- it's less
23 than ten. It's six. There's six applications --

24 THE COURT: Oh, that's --

25 MR. WILLIAMS: -- if my count is right. If we --

1 THE COURT: We can definitely do it.

2 MR. WILLIAMS: -- were to do it five minutes max each.

3 And if I can make a suggestion, which would be -- my
4 perspective would be it should just be those applying rather
5 than other people getting up and saying, "Here's why I think
6 you should pick A or B," because all of us could bring our
7 friends in to do that. I don't find that to be particularly
8 helpful.

9 THE COURT: It's such a beauty pageant.

10 (Laughter.)

11 THE COURT: Well, we'll see how it goes. It's all
12 going to be on my schedule, okay?

13 So we'll start at 12:30. And then if anyone -- I'm
14 going to leave it up to those who filed a petition to work with
15 each other in case someone has an earlier flight, okay? So if
16 there's an earlier flight, let that person go earlier and then
17 the others can stay later, just because you're going to be in a
18 holding pattern between these other court calls, okay?

19 All right. So that should take care of that, and that
20 will give me an opportunity to help you with the appointment of
21 counsel.

22 Now, the next question that seems to be in big dispute
23 is your discovery issue regarding the DOJ material.

24 It seems completely appropriate for me to hold off
25 until I have my interim counsel to give me a nice fair argument

1 regarding that and then from defense to let me know what your
2 position is.

3 This three million DOJ documents does not intimidate
4 me, nor should it be a situation that should make you nervous.
5 We'll work on some kind of program to get it to you in the
6 appropriate fashion and the right material to you. So that's
7 not a concern as far as the size.

8 Confidentiality orders. I think if I give you an
9 interim lead counsel soon enough, you ought to just be able to
10 work out your confidentiality order and get it online before
11 the end of the year. You'll send it to me. And I'll do it the
12 way the Northern District of Illinois does it with the red
13 line, and I can make my own edits to it. That seems to be the
14 appropriate situation. So if I give you a lead counsel by next
15 week, then all of this can just fall into place, I think.

16 Okay. Now, a few things that I am a little bit
17 confused about because I haven't done one before are the
18 tag-along cases.

19 For starters, everything that's come in, I've directed
20 to the Clerk's Office. They're doing your review for
21 pro hac vice applications. Most of you should be getting all
22 of those approved as they come through. We have to just check
23 the roster, and then it goes out. So I think you should be
24 getting those automatically. And they're also consolidating
25 automatically, so they're coming in together. And I'm just

1 getting the list as they're coming along.

2 But if there's something that is not appropriate in
3 that, I'd love to hear from anybody if they think that I'm
4 doing it the wrong way.

5 (No affirmative response.)

6 THE COURT: I had to talk with the Clerk's Office
7 about how they do these things.

8 Okay. Let's see. What else do I have out there for
9 any -- oh, okay. Who wants to tell me -- can I please just get
10 from some -- maybe I'll pick a couple plaintiffs right now,
11 just to give me what you say is the overarching claims, the
12 federal antitrust claims and the state antitrust claims, and
13 then the difference between the direct purchasers, indirect
14 purchasers. And then, similarly, I'll call on a few defense
15 attorneys to give me your overarching sense of the defense.
16 Just so I -- that's what I would do at an initial status, okay?

17 So I'll take volunteers. Any plaintiffs want to jump
18 up?

19 There's the first guy.

20 And you can be second, and you can be third, and you
21 can be fourth. And then I'll get four over here. All right?

22 So please stand.

23 What do you intend to prove?

24 MR. WILLIAMS: Thank you, your Honor. Steve Williams
25 on behalf of Holmen.

1 So I'm glad you raise this. I think this is a really
2 critical question as to (inaudible).

3 Some of the applicants --

4 COURT REPORTER: I'm sorry, I can't hear you.

5 THE COURT: Yes, I tell you what, why don't you come
6 to the front. And he said: This is a really critical question
7 as to what we have to do.

8 Okay. Go ahead.

9 MR. WILLIAMS: Thank you.

10 So the Court may have noticed, some of the
11 applications actually call out this issue.

12 So, for example, the application Ms. Sims has put in
13 is to represent a class of state law purchasers with indirect
14 claims.

15 And without going through all of the details, because
16 it's a somewhat complicated area, there's two bodies of law
17 that provide damage claims in antitrust cases.

18 Federal law says you can only bring a claim for
19 damages if you dealt directly with the defendant. There are
20 very limited exceptions to that, and exceptions are not freely
21 granted.

22 Various states have said you may bring cases for
23 damages for antitrust violations even if you didn't deal
24 directly with the defendants.

25 So there's only one complaint before the Court and one

1 case that explicitly says it seeks state law claims. That is
2 Ms. Sims. No one else has asserted that.

3 However, for the rest of the claims, some -- such as
4 the motion I brought, specifically say we want to represent
5 those seeking claims for federal damages.

6 Similarly, the Kaplan Fox group has submitted that
7 they want to represent agencies because they recognize there's
8 going to be an issue because agencies purchase for advertisers,
9 but the question is who deals directly with the defendant.

10 That is -- it's apparent from the papers submitted so
11 far, that's going to be an issue that has to be addressed.

12 So it's really a matter of deciding how to put
13 leadership in place at the time the Court does it that respects
14 the fact that there are separate state claims that need to be
15 in a separate state law complaint; separate federal claims that
16 need to be in a federal complaint; and then the question of, as
17 between agencies and advertisers, who is the proper plaintiff
18 for the federal damage claims.

19 And I think that's something that it's going to be
20 important for the Court to address at the earliest point to
21 prevent problems and speed bumps about three months from now.

22 THE COURT: But it's not uncommon, right? That you
23 would have both the federal and state claims in an MDL like
24 this?

25 MR. WILLIAMS: It is not uncommon; it is, in fact,

1 common. But it is routine practice that they would be in
2 separate consolidated complaints with separate representation
3 accounts.

4 THE COURT: Got it. Okay. Thank you.

5 MR. WILLIAMS: Thank you.

6 THE COURT: And whoever I called on next. Thank you.
7 Come on up and introduce yourself, please.

8 MS. SRINIVASAN: Thank you, your Honor. Kalpana
9 Srinivasan from Susman Godfrey on behalf of the plaintiff
10 Mowrer for Iowa.

11 To get back to the Court's initial question as to the
12 claims here, the claims that counsel here and plaintiffs have
13 alleged has to do with price-fixing and being able to share
14 competitive information in the market for local advertising.

15 As the Court is aware since the parties have filed
16 complaints, the defendants in this case and a number of other
17 defendants have been involved in a consent order with the
18 Justice Department which has provided some additional detail
19 and illuminated some of the nature of those allegations,
20 including parties sharing information about their inventory and
21 other information that's deemed competitive and allows them to
22 be able to adjust their price. And that's really the core of
23 the allegations in this case.

24 I expect -- you know, your Honor referenced the
25 documents and the issue of the Justice Department's

1 investigation. I do believe that those are going to be able to
2 further enhance the allegations that the parties have already
3 put together. And as you've seen from the different plaintiffs
4 in this case, the impact -- for example, my client had to
5 purchase political advertising -- the impact of the price
6 elevation and of the inappropriate sharing of competitive
7 information had a direct impact, particularly in this very
8 specialized market for local advertising.

9 THE COURT: So wouldn't there be some of those
10 documents, however, that would be protected in the DOJ
11 investigation -- I mean, I don't know. I'll talk to you all
12 when I get to you as far as where they stand with that. But, I
13 mean, it seems that was the one flag that I saw popping up as
14 far as what you want and what you're able to get.

15 MS. SRINIVASAN: Yes, your Honor. In other cases,
16 we've had entry of a protective order prior to the production
17 of those documents. Typically, defendants will be ordered to
18 produce those after an initial case management conference, and
19 they will produce the investigatory documents that they
20 initially turned over to the government.

21 In terms of coordinating for additional documents the
22 government has been able to obtain, I imagine that we will have
23 ongoing discussions about how to do that while protecting the
24 work that the government has done as well.

25 THE COURT: Got it. Okay. Thank you very much.

1 MS. SRINIVASAN: Thank you, your Honor.

2 THE COURT: Anyone else, please?

3 MS. SIMS: Good morning, your Honor. Victoria Sims.
4 I'm from the law firm of Cuneo Gilbert & LaDuca, and I'm here
5 on behalf of John O'Neil Johnson Toyota.

6 So as stated previously, this case is about
7 overpayment for advertising time as a result of
8 information-sharing by the defendants who own a variety of
9 local television stations. So we have folks who purchased
10 directly from the television stations; we have folks who
11 purchased from advertising agencies. My client did both.

12 My client is the only one, as Mr. Williams stated, who
13 is asserting the indirect purchaser claims under indirect
14 purchaser laws. So that's under a variety of state laws:
15 State antitrust laws, state consumer laws, state unjust
16 enrichment laws.

17 So it is typical when there are state law claims,
18 those do not go in the same complaint as purely direct
19 purchaser claims. They can be included in a complaint with
20 direct purchaser damage claims, however. So I can give you a
21 number of examples --

22 THE COURT: So how does it play out then later down
23 the line? So we get all of our work done, and then we say
24 we're going to go to trials, I mean -- so you're separated into
25 the state court and the rest are in the federal court?

1 MS. SIMS: No, no. All of the claims are here in
2 federal court.

3 THE COURT: As far as trials.

4 MS. SIMS: Correct.

5 THE COURT: When you go to trial.

6 MS. SIMS: Correct, correct.

7 THE COURT: Okay. I've done plenty of bellwether
8 trials for my colleagues who have done these and plenty of
9 others that have been shot back; but, you know, they're all
10 usually tied up and ready for me to go, so I don't know how to
11 do the beginning.

12 All right. Thanks very much.

13 MS. SIMS: So just --

14 THE COURT: Go ahead.

15 MS. SIMS: Just to clarify, what we seek to represent
16 is a class of purchasers who are asserting indirect purchase
17 claims.

18 THE COURT: I get it.

19 MS. SIMS: They're not limited to those indirect
20 purchase claims. They're, of course, not waiving their direct
21 purchaser claims.

22 THE COURT: Got it.

23 MS. SIMS: They do want to make sure that they assert
24 those in the same complaint. They wouldn't split up their
25 claims between different complaints. But they're seeking their

1 own complaint, their own case, because they have these unique
2 claims --

3 THE COURT: Got it.

4 MS. SIMS: -- which are litigated differently.

5 Thank you so much.

6 THE COURT: I get it. Thank you. Okay, thanks.

7 MS. M. JONES: Briefly, your Honor, not to repeat
8 what's already been covered. Megan Jones, Hausfeld.

9 I think most of the issues that you'll hear later
10 today -- the indirect versus the direct controversy, as well as
11 leadership of a certain category of plaintiffs -- can all be
12 handled once lead counsel is appointed.

13 An example, Ms. Hollis Salzman and I are co-lead
14 counsel in *Cargo*. We had the very same issue. The court
15 appointed co-lead counsel. And they decided whether separate
16 counsel for certain classes were warranted --

17 THE COURT: Okay.

18 MS. M. JONES: -- and so I think the issues that
19 you'll face today can be decided once we --

20 THE COURT: Right.

21 MS. M. JONES: -- decide lead counsel.

22 THE COURT: It sounds like I get to turn over a lot to
23 you all who get to do a lot of work.

24 Go ahead.

25 MS. GARVEY: Good morning, your Honor. Karin Garvey

1 for The Bon-Ton Stores.

2 I largely agree with what's been said and what
3 Ms. Jones just said as well regarding the fact that conflicts,
4 should there even be any conflicts with regard to the direct
5 purchasers, those can certainly be handled by lead counsel.
6 And that's what Judge Shah has recently done in the *VIX* case.

7 THE COURT: Okay.

8 MS. GARVEY: The one element that I wanted to mention
9 that I think was omitted from the description of the nature of
10 the case as well as the nature of the Department of Justice's
11 complaint and what they said in their competitive impact
12 statement was the significance of the designated market areas
13 throughout the country.

14 The country is divided by Nielsen into different
15 market areas, and those market areas are how advertising time
16 is bought throughout the country. And that played a
17 significant role, frankly, in the description of what the
18 conduct -- the anti-competitive conduct of defendants was in
19 the DOJ's mind in the sense that it matters where the
20 defendants have overlapping DMAs. These television station
21 owners own stations in various markets throughout the country.
22 They don't own them in every market. Sometimes they overlap in
23 a market. Sometimes it might just be that one of the
24 defendants is in a given market. And with one in a given
25 market, a conspiracy is a little bit different, of course.

1 THE COURT: Got it.

2 MS. GARVEY: Thank you, your Honor.

3 THE COURT: Anyone chomping at the bit that I -- that
4 the others didn't say something that you feel should be said?

5 Go ahead, Mr. Barz.

6 MR. BARZ: I'm not going to speak for the sake of
7 speaking. I think I would repeat -- what you've heard here is
8 two arguments. You asked a question what the case is about and
9 you heard some people weaving in why they might be appointed,
10 but I'm going to save that for later.

11 THE COURT: Okay. That's fine. All right. Anyone
12 else who feels the need?

13 Go ahead. Come on up.

14 (Approaching.)

15 THE COURT: And you can move the microphone so we can
16 hear you.

17 MS. KATCHER: I'm used to this.

18 THE COURT: You're accustomed to that, right?

19 MS. KATCHER: I just wanted to speak really quickly
20 because I will save my discussion of advertising agencies for
21 our five-minute talks, but I just wanted to clarify.

22 There can be good reason to make sure that the initial
23 lead structure actually is representative of the way -- the
24 realities of the way people purchase in the marketplace.

25 There are two generally different kinds of direct

1 purchaser plaintiffs. There are individual businesses of the
2 type that most of the lawyers here are representing who will go
3 directly to a TV station, make a purchase for their advertising
4 spot.

5 Then there's another group that will go through
6 advertising agencies. Advertising agencies will purchase
7 directly as part of a range of services that they offer to
8 their clients.

9 You would want both types of plaintiffs, when you see
10 that there's two groups like that, actually represented in the
11 leadership structure so that potential standing issues,
12 conflicts, can be dealt with early and that those plaintiffs
13 feel they have representation.

14 We had attached to our papers a recent case just this
15 month in the *CRT* case that shows some of the results if you
16 don't have that starting out.

17 THE COURT: I saw that. Okay. Thanks very much.

18 Go ahead. Come on. Good morning.

19 MS. OLIVER: Good morning, your Honor. I'll be very
20 brief as well.

21 Jennifer Oliver, MoginRubin, for The Barnes Firm.

22 I would like to also advocate that we establish a
23 structure for leadership as opposed to allowing plaintiffs'
24 counsel to sort of figure out the direct and indirect and
25 advertising agency leadership amongst themselves.

1 The Barnes Firm feels strongly that a strong
2 leadership structure that accounts for directs, indirects,
3 other classes of plaintiffs, as well as various regional and
4 geographic aspects of the case is very important to establish
5 up front. And so we would advocate, as Ms. Katcher said, the
6 importancy of establishing a leadership structure.

7 THE COURT: Okay. Thanks.

8 MS. OLIVER: Thank you.

9 THE COURT: I'm going to turn over to the defendants
10 now. Anybody want to jump in?

11 Thank you. Make sure you say your name first when you
12 get to the lectern for me. Thank you.

13 MR. COHEN: Yes, your Honor. Jay Cohen from Paul
14 Weiss for Tribune.

15 THE COURT: Okay.

16 MR. COHEN: So we're not going to address the
17 leadership structure. We think the Court is going about this
18 the right way. Let's establish that. And we'll work things
19 out with them hopefully in the way we would --

20 THE COURT: Well, because you don't even think there's
21 an antitrust violation --

22 MR. COHEN: Correct.

23 THE COURT: -- right?

24 (Laughter.)

25 MR. COHEN: I'm going to sit down now, your Honor.

1 THE COURT: Right? I got it.

2 MR. COHEN: No, we don't think there's antitrust
3 violation alleged in the complaints we've seen so far.

4 There was simply a story in the *Wall Street Journal*
5 which contained a leak from the Department of Justice, which
6 led to two dozen complaints which have no more information than
7 is present in the *Wall Street Journal* article. That doesn't
8 begin to address what's required under *Twombly* to plead an
9 antitrust case. We don't think they can plead an antitrust
10 case. We don't think the proposed final judgment that only
11 some of the defendants entered into -- my client has a proposed
12 final judgment, but a number of folks sitting at the table have
13 not entered into proposed final judgments with the government,
14 so we're not all similarly situated in that way -- but those
15 judgments on their face don't constitute an admission of
16 liability. And we don't think there are any facts that are
17 pled in the complaint and they're not, of course, admitted by
18 us; but those facts would not allege an antitrust conspiracy
19 that could survive a motion to dismiss. So we --

20 THE COURT: So is it like -- it's a judgment -- it's
21 not a consent --

22 MR. COHEN: It's a consent --

23 THE COURT: It's a consent decree --

24 MR. COHEN: Just like at the SEC, Department of
25 Justice, same thing.

1 THE COURT: Okay.

2 MR. COHEN: It's without -- it's an express denial of
3 liability. It's without any finding that the facts have been
4 proven by the government. It is a way of ending a government
5 investigation.

6 THE COURT: Okay. And just to show my naivete on this
7 issue, so this isn't something that the MDL panel, before they
8 send it all off to me, has looked at as to whether it states a
9 claim?

10 MR. COHEN: They have not. They have not. They have
11 not. The MDL panel, as I understand it, your Honor --

12 THE COURT: It seems a little backward.

13 MR. COHEN: Well, I think you've been given the honor
14 of deciding, rather than us deciding it 25 times --

15 THE COURT: Okay.

16 MR. COHEN: -- but, you know, we'll work with the
17 plaintiffs to come up with a timely schedule for --

18 THE COURT: Sure.

19 MR. COHEN: -- motions to dismiss, and we'll see if
20 there's an operative complaint that's left after that.

21 THE COURT: Got it. Okay. Thank you very much.

22 MR. COHEN: Thank you, your Honor.

23 THE COURT: Who else would like to speak?

24 Oh, wow, you're all in -- you're unified.

25 MR. FORTINSKY: I'll just add one thing, if I may.

1 (Laughter.)

2 MR. FORTINSKY: Jerry Fortinsky for Sinclair.

3 Mr. Cohen addressed everything we need to say.

4 I just want to underscore that the -- the plaintiffs
5 seem to have in mind a model where the Department of Justice
6 does a criminal investigation, and then at the end they
7 discover that they get settlements with some parties that have
8 acknowledged their -- that have pleaded guilty and acknowledged
9 their guilt. This is not like that. This is a civil matter.
10 There were no fines. There was no penalties --

11 THE COURT: Oh, there's no fines or penalties imposed?

12 MR. FORTINSKY: Right. This was not that model at
13 all.

14 And, in fact, as Mr. Cohen said, there was no
15 finding -- no admission of wrongdoing, no finding of
16 wrongdoing, no admission of liability.

17 THE COURT: So what does the consent decree comprise?
18 An agreement of how to behave in the future? Is that how it
19 works?

20 MR. FORTINSKY: Essentially, it was the DOJ
21 establishing norms for what is to be done in the future.

22 I would also underscore that, as one of the
23 plaintiffs' counsel said, in this business there are DMAs.
24 It's not one national market, which is another way in which
25 this case is different from the kind of standard model template

1 that I think many of the plaintiffs' counsel seem to have in
2 mind.

3 This is not simply one purported nationwide
4 conspiracy. This is not like that at all. There's no
5 conspiracy to begin with.

6 But beyond that, we're talking about DMAs throughout
7 the country representing separate markets.

8 THE COURT: Okay. Thank you for that.

9 Anyone else from the defense that wants to add
10 anything?

11 (No affirmative response.)

12 THE COURT: Okay. All right. So if I'm on the right
13 track -- and I hope I am, and you're free to correct me if I'm
14 not -- I'm going to do this little fashion show that you do --

15 (Laughter.)

16 THE COURT: -- and then I'll make my determination. I
17 intend to do so quickly so that it gets you some guidance.

18 Then once I make that determination, I will expect
19 that you -- I'll give you a date for a proposed confidentiality
20 order.

21 And then from that date, I will give you a proposed
22 motion to dismiss scheduling order.

23 Does that sound like a plan?

24 MULTIPLE COUNSEL: Yes.

25 THE COURT: Okay. Is there something I'm missing in

1 all of that?

2 MS. M. JONES: Megan Jones from Hausfeld.

3 You're not missing anything, your Honor. But for a
4 good order sake, I would propose that the lead counsel
5 petitions be heard in the order that they were filed, unless
6 there's a flight, and that will help everyone --

7 THE COURT: Doesn't bother me.

8 MS. M. JONES: -- organize themselves.

9 THE COURT: You're all professionals. I think you can
10 work that out. I never micromanage good lawyers, so I don't
11 mind -- whatever fashion you want.

12 Sir?

13 MR. BURNS: Your Honor, just briefly. It's Warren
14 Burns from Burns Charest.

15 I am an applicant. Unfortunately, I have a family
16 matter that requires me to leave this afternoon, and I would
17 not be able to attend the hearing.

18 My colleague Amanda Klevorn from my firm is here, and
19 she can present on our behalf.

20 THE COURT: That's fine. I don't mind. Okay.

21 All right. So does it make sense before you all break
22 up that I give you that schedule with the idea that I would --
23 I mean, I hate to give myself a deadline for the filing, but if
24 I can work off of, like, an internal deadline, and then give
25 you something maybe before you leave? Does that sound like a

1 plan?

2 MR. COHEN: Just to be clear, we're going to need a
3 consolidated complaint. I assume that's what your Honor
4 means --

5 THE COURT: Yes, exactly --

6 MR. COHEN: -- filing of the consolidated --

7 THE COURT: You need to do a consolidated complaint.
8 And then I would need to do the motions and the response.

9 MR. COHEN: Yes.

10 THE COURT: And then does it make sense to do that
11 before the interim counsel or wait?

12 MR. COHEN: Well, we have actually conferred and
13 agreed on a schedule --

14 THE COURT: Okay.

15 MR. COHEN: -- which is in the order --

16 THE COURT: Oh, I don't remember that.

17 MR. COHEN: -- in the status report --

18 MR. WILLIAMS: I think what counsel is --

19 THE COURT: Wait, wait.

20 MR. WILLIAMS: Defendants have agreed on a schedule --

21 THE COURT: Oh, okay. Hold on, hold on. Hold on.

22 You have to say your name before you speak.

23 MR. WILLIAMS: I apologize. It's Steve Williams.

24 MR. COHEN: Your Honor, we have agreed on a motion --
25 a schedule. That is correct.

1 MR. WILLIAMS: That is correct.

2 MR. COHEN: Right. So it's in Section D of the status
3 report. So that upon the filing of a consolidated complaint,
4 60 days for the motion to dismiss, 60 days for opposition, and
5 30 days for reply.

6 THE COURT: That's fine then. I can use that from
7 when I give you your deadlines. Okay. That's not a problem.

8 MR. WILLIAMS: Your Honor, if I may, what I wanted to
9 respond to is to the extent what counsel is suggesting is that
10 the other documents that the Court referred to, such as the
11 confidentiality order, need to await the complaint. I think
12 all of us on our side would disagree with that. There's no
13 reason for those documents -- protective order, discovery
14 orders, et cetera -- to wait until the consolidated complaint
15 and the motion practice has ended.

16 THE COURT: Okay. I'll take a look at it and see.

17 Anything else that needs to be addressed before I go
18 through your presentations? Anyone?

19 MR. ANTIA: Your Honor, Mazda Antia on behalf of Gray
20 Television.

21 To the extent the consolidated complaint, when we see
22 it, has issues that are unique to certain defendants, we want
23 to reserve the right to file separate motions to dismiss.
24 We'll file an omnibus motion, but we wanted --

25 THE COURT: I have no problem with that either. I

1 look forward to it. It's not going to be an issue.

2 MR. ANTIA: Thank you.

3 THE COURT: Okay. No, that's not an issue.

4 Okay, folks. Well, I look forward to this. This will
5 be fun.

6 (Laughter.)

7 UNIDENTIFIED SPEAKER: Famous last words.

8 THE COURT: Famous last words, right.

9 I understand it's a baby one in comparison, so I'm not
10 too worried.

11 Okay. So I will start up then at 12:30 in the order
12 that you want. We'll give five minutes each. And I have to
13 pick up right now with a sentencing and some other matters.
14 All right?

15 MULTIPLE COUNSEL: Thank you, your Honor.

16 THE COURT: You might as well start moving out so that
17 the prosecutors come in.

18 For those of you who are making presentations, there
19 is on this floor -- hold on, folks -- on this floor there is an
20 attorney trial bar room, kitty corner from my office. And if
21 you want to discuss in there, it's got some space for you to do
22 so. Okay?

23 (Judge Kendall attends to other matters.)

24 THE COURT: All right. For those of you waiting on
25 the MDL, you'll have to wait. We haven't had a break yet from

1 the bench, so we'll come back to you at 1:00 o'clock, for those
2 waiting for oral arguments.

3 And then you get a little bit of a break. Okay.

4 COURT REPORTER: Thank you, Judge.

5 THE CLERK: All rise. Court is in recess.

6 (Brief recess.)

7 (Proceedings heard in open court:)

8 THE COURT: Who is going first? I heard that you were
9 going to take turns.

10 UNIDENTIFIED SPEAKER: Yes.

11 THE COURT: Thank you.

12 Guess what I have? (Indicating.) I got this -- this
13 is not -- this is not a red light. This is like the Wicked
14 Witch of the West.

15 (Laughter.)

16 THE COURT: Someone gave it to me as a joke because I
17 always tell people, you know, "You have three more minutes,"
18 and then they always go over. And so guess what? One has five
19 minutes on it.

20 MS. GARVEY: We're just going to share our five
21 minutes.

22 THE COURT: Go ahead.

23 MR. LEVITT: Okay. Thank you, your Honor.

24 Once again, I'm Adam Levitt, representing The Bon-Ton
25 Stores.

1 As you'll see if you haven't seen already, I
2 occasionally stutter when I speak. Not a problem for me;
3 shouldn't be for you. If anything I say isn't entirely clear
4 in my three minutes of magic, please let me know and I'll go
5 right back over it.

6 THE COURT: It doesn't bother me at all.

7 MR. LEVITT: Okay. Anyway, it's clear from the
8 applications that everyone who has applied is probably capable
9 of leading this case. I think we have a lot of very high
10 quality lawyers here.

11 So the question becomes how to differentiate between
12 each applicant and figure out who should really lead this case.

13 While Ms. Garvey is going to talk about the
14 investigation we did and the scope of our group, I wanted to
15 speak about our client.

16 The Bon-Ton Stores is a larger client, a larger
17 plaintiff, I would submit, than every other plaintiff in this
18 case combined and doubled. We are a very large plaintiff. It
19 has purchased almost \$100 million worth of ads in the class
20 period. We have the most significant interest in this case.
21 In the class period, our purchases, as I said a minute ago, far
22 exceed everybody else's.

23 While this is not, admittedly, a PSLRA case where the
24 largest always wins, I'll explain to you why here the Manual
25 for Complex Litigation, Section Number 21, 272, as well as --

1 as well as other judges in this building, as well as right next
2 door, Judge Gottschall, have actually appointed leadership in
3 antitrust cases like this one based upon the size of the
4 plaintiff.

5 In *Blood Plasma Antitrust Litigation*, the Shapiro
6 Haber firm was appointed lead counsel. They represented the
7 Mayo Clinic. The Mayo Clinic's purchases of plasma far
8 exceeded anybody else's. So, too, here the Bon-Ton Stores far
9 exceed any -- any other plaintiff here.

10 Likewise, in New York, in *LIBOR*, the Court said that,
11 and I'll quote, "The magnitude of a plaintiff's economic
12 interest is highly relevant in deciding who should be
13 appointed."

14 So here we have a situation that not only did our
15 client, The Bon-Ton Stores, purchase almost \$100 million in
16 local television advertising time in the class period, but,
17 importantly, and as we began speaking about earlier, it made
18 those purchases across the United States. So we're not just a
19 one -- one-market player, like almost every other proposed
20 plaintiff here.

21 We -- our client operated 270 retail stores across the
22 United States. As Ms. Garvey spoke about earlier, the
23 importance of the existence of DMAs around the country, we are
24 in over 50 of them. There isn't another plaintiff here who can
25 say anything like that.

1 So the breadth and depth that our client brings to
2 this case is one of the plus factors that sets us apart.

3 Also our client is a direct purchaser. They purchase
4 through -- they purchase through a cost-plus contract with the
5 agents. And it's been clear that when an agent is simply --
6 simply a purchasing agent, as the courts have stated, for
7 example, in *Cathode Ray*, as well as in *In Re. Toilet Seat*
8 *Antitrust Litigation*, where the fact is that --

9 THE COURT: There's one I didn't get.

10 (Laughter.)

11 MR. LEVITT: I understand. It's the glamorous side of
12 the law, your Honor.

13 THE COURT: Exactly.

14 MR. LEVITT: It's just one of those things. God knows
15 what the second choice name would have been in that case.

16 So here our client's contract with its advertising
17 agency specifies, for example, that our client will be charged
18 at the rates charged by the owners of the media, less any
19 agency commission. Likewise, our client's contract specified
20 that its agent will purchase media on behalf of Bon-Ton as
21 directed by Bon-Ton and only with its prior written
22 authorization. So the direct purchase link there is very
23 clear.

24 The agent -- I know that a lot of people are going to
25 probably say that the agency issue actually matters here. I'll

1 be very clear. It doesn't. We are a direct purchaser.

2 Finally, and then I'll turn it over, is that we are a
3 Chicago law firm. My office is right down the block.
4 Coincidentally, the indirect purchaser's counsel, Mr. Clifford,
5 for example, is here in Chicago, thereby increasing the
6 coordination aspects of the indirect piece of this case, the
7 direct piece of the case.

8 THE COURT: So I had a plaintiff's lawyer who once
9 told me -- I said, "You've missed your last two statuses." And
10 he said, "Well, Judge, I'm here in the building every day."
11 And I said, "What am I supposed to do? Go out in the hallway
12 and go, Mr. So-and-So, come here." And I thought maybe that's
13 what you're suggesting, I could just yell out the window, "I
14 need you, get over here." Is that the idea?

15 MR. LEVITT: We'll cross that bridge when we come to
16 it, your Honor.

17 (Laughter.)

18 MR. LEVITT: Thank you very much.

19 THE COURT: Thank you. Okay.

20 MS. GARVEY: Your Honor, Karin Garvey also for The
21 Bon-Ton Stores.

22 I first wanted to highlight the first 23(g) factor,
23 which is work done to investigate the case.

24 Earlier, Mr. Cohen for the defendants said that the
25 plaintiffs' complaints simply parroted back these bare fact

1 allegations that were included in a *Wall Street Journal*
2 article.

3 That's simply not the case for our client. If you
4 take a look at our complaint, that is not what we did.

5 It may be what the 18 complaints did that were filed
6 before ours, but it is simply not what we did.

7 We spent nearly 375 hours prior to filing our
8 complaint investigating the nature of the claims here. We
9 spoke with over 70 former employees and/or industry insiders to
10 try to learn what was going on. We filed a FOIA request with
11 DOJ. We've researched the defendants. We worked with an
12 economist.

13 Through that investigation, we discovered the
14 significance of the designated market areas, the DMAs, and the
15 real significance of the overlapping DMAs in this industry, as
16 I explained earlier.

17 And, of course, this ties in to the size of our
18 client, as Mr. Levitt said a minute ago, because our client
19 purchased in over 50 DMAs.

20 I want to be very clear that we disagree with
21 Mr. Fortinsky that a DMA here has anything to do with what a
22 relevant market is. It can have a nationwide conspiracy even
23 where DMAs play a role.

24 I also want to say that given your Honor's comment at
25 the outset of our hearing this morning that this is your first

1 MDL, I just wanted to say --

2 THE COURT: Don't be -- I'm not afraid of it.

3 (Laughter.)

4 MS. GARVEY: I just wanted to say a word about the
5 size and structure of the proposed leadership groups.

6 We've applied here as a two-firm structure. We don't
7 need a liaison counsel because, as you noted, you could yell
8 out the window at Mr. Levitt and he would come running. And
9 this is, in your words, a baby MDL. It is not a massive MDL.
10 It just simply isn't.

11 And I'll also note that you might have seen in some of
12 the submissions firms filing papers in, quote, unquote, support
13 of other firms.

14 In our experience and the experience of multiple
15 courts who have spoken on this issue and the Third Circuit Task
16 Force which has written on this issue, support usually comes in
17 exchange for promises of work. That's why firms support one
18 another. Then they get to do work on the case. We want to be
19 clear that we have not made any promises here to other firms in
20 exchange for support. We did not promise work to anybody else.

21 And that's important because, again, it goes back to
22 the size of the case and the proposed leadership structures.

23 This isn't a case where you need five, six, seven,
24 even four firms working on it. It's just not that large.

25 Of course, having said that, if we need help, we are

1 more than happy to reach out to other firms here.

2 If your Honor chooses to appoint your own leadership
3 structure involving other firms, we've worked with all of the
4 firms in the courtroom before and we'd happily do so again. We
5 just don't think that anything larger than our two-firm
6 structure is needed here. We think that our firms are more
7 than capable of handling this case.

8 We have decades and decades of antitrust experience.
9 We have decades of experience before this very Court. We have
10 trial experience. And significantly here, given the role of
11 the DOJ case, we should mention that we have a lot of
12 experience working with the government.

13 We also bring to the table diversity. We have a team
14 assembled that is diverse in terms of gender, in terms of race,
15 in terms of sexual orientation, something that we know a lot of
16 courts have been focusing on of late because, of course, with
17 diversity comes various perspectives to a litigation that bring
18 a lot of value.

19 And I'd like to maybe just say one more personal note
20 about me. I went into this in more detail in our papers. But
21 I actually spent 18 years on that side of the V. I'm very
22 familiar with defendants because I did it for almost two
23 decades. And because of that, I bring a certain perspective to
24 a case that I think is often lacking.

25 I've been able to cut through so many issues and break

1 up so many log jams in my three years on the plaintiffs' side
2 of the V because I understand sort of what's driving the
3 defendants, what's driving, frankly, their clients who are
4 ultimately, of course, the decision-makers. And that's brought
5 a lot of efficiency in the cases that I have worked on.

6 So unless your Honor has any questions --

7 THE COURT: I don't. Okay?

8 MS. GARVEY: Thank you.

9 THE COURT: Thanks very much.

10 And I didn't even, like, take out my crystal ball and
11 the flying monkeys.

12 (Laughter.)

13 THE COURT: Okay. Who is next?

14 (Approaching.)

15 THE COURT: Good afternoon.

16 MS. OLIVER: Good afternoon, your Honor. Jennifer
17 Oliver on behalf of The Barnes Firm.

18 And I am here to argue for appointment of Daniel Mogin
19 to the leadership of this case.

20 Your Honor, if I may, I'd like to touch first upon --
21 and I did this earlier as well -- what we think is the
22 importance of establishing an effective leadership structure at
23 the outset for this case.

24 As some of my colleagues mentioned earlier, this is
25 inherently a local case. It's in the name of the case. And

1 there are a lot of regional sort of realities to the facts of
2 the case. It is about local TV advertising. And, therefore,
3 we are proposing a three-firm leadership structure, with one
4 firm from the West, one from the Mid-Continent, and one from
5 the East.

6 We are also proposing that the direct and indirect
7 purchasers should be separately represented, and that is due to
8 the additional burdens that the indirect purchasers will face
9 with regard to discovery and proving damages and things like
10 that.

11 And -- but within the direct purchasers, we're
12 proposing a three-firm leadership structure, and feel that it's
13 very important that the Court establish that up front rather
14 than just allowing counsel to sort of divvy up work among
15 themselves without all members of the class necessarily being
16 fairly represented.

17 One of the reasons we think it's very important to
18 establish a team is that, rather than a single mega plaintiffs'
19 firm sort of doling out work, a team will allow diverse
20 approaches and viewpoints to be brought to the case.

21 We would say that a team does not mean inefficient.
22 We have been party to many very efficient leadership teams and,
23 in fact, have worked with many of the folks in this room on
24 other MDLs in teams.

25 And as your Honor said earlier, it may not be a huge

1 case, but we don't really think that it's a baby case. I think
2 you can see on this side of the room there are many lawyers
3 from many of the top defense firms in this country representing
4 large media companies. There's going to be significant
5 discovery. I think the term three million documents has
6 already been thrown around today. So we would say it's not a
7 baby case. And a team is, in fact, appropriate to handle the
8 case. And at the end of the day, no one firm is going to
9 litigate this case on its own.

10 And, again, my colleague before me said this, but I
11 would also recognize that many in this room are very capable of
12 litigating this case, and so it's really a question of what
13 will best serve the class in terms of structure.

14 And I would next like to talk about our client as
15 well. Our client, The Barnes Firm, is a truly direct
16 purchaser. They do not purchase through any outside agents.
17 They deal directly with defendants. And they have purchased
18 more than \$15 million of ads during the class period. They are
19 in three of the top 30 DMAs in the country, including Los
20 Angeles, which is the second largest; and San Francisco, which
21 is the eighth largest; and including overlapping DMAs, which is
22 an issue that some of my colleagues have discussed in their
23 complaints because DMAs, where there are overlapping
24 defendants, may have been especially affected here in this
25 price-fixing conspiracy.

1 And so our client has a very strong interest in the
2 outcome of the case. We've already done a lot of diligence
3 with our client in gathering significant data on their ad buys
4 over the years.

5 And, in fact, our client is so ubiquitous that if you
6 look on YouTube, there are dozens of videos of toddlers singing
7 their jingle. It's -- they have a very strong interest in the
8 outcome of this case, and it's very central to their business
9 motto.

10 And, finally, our client is the only Western client --
11 or Western plaintiff in the MDL.

12 So I'll direct your Honor to Exhibit B of the Daniel
13 Mogin declaration that was filed with our leadership
14 application. And I do have a copy of it here if you would like
15 me to hand it up. But you will see that the plaintiffs here
16 are actually quite concentrated in the East and Mid-Continent.
17 And The Barnes Firm really stands alone west of the Rockies as
18 a sole Western plaintiff. And so if your Honor does choose to
19 adopt a proposed leadership structure of one West, one
20 Mid-Continent, and one East firm, our client is alone in the
21 West. And we are -- our client does advertise in San Diego,
22 L.A., and San Francisco, some of the largest DMAs at issue
23 here.

24 And, finally, but very importantly, I would like to
25 talk about our firm and our firm's capabilities. As I said

1 earlier, many firms here are very capable of litigating this
2 case. But we, too, have a long history of litigating antitrust
3 matters, including in this district.

4 We recently litigated and partially settled the *Kleen*
5 case in this district for more than \$350 million, along with --
6 we were lead counsel in that case. And we were co-lead with
7 some others in this room. And that was the third largest
8 antitrust settlement, we believe, ever to be reached in the
9 Northern District of Illinois. And that was litigated by
10 Daniel Mogin and also my colleague here in the courtroom, Jodie
11 Williams.

12 Dan Mogin has more than 38 years' experience
13 litigating antitrust matters around the country, including in
14 this district, and he has been lead counsel in many.

15 We also have -- he's an antitrust professor. And
16 he -- his partner, John Rubin, is a Ph.D. in economics. So we
17 have quite strong econometric skill on our team as well.

18 As I mentioned, my colleague, Jodie, litigated the
19 *Kleen* case in this district for a significant settlement.
20 Partial settlement so far. She's also very active in the ABA's
21 Antitrust Section and is the lead of the Antitrust Section of
22 the Women's Initiative.

23 And as my colleague before me said, I, too, have
24 litigated on this side of the V. I was at Weil Gotshal for ten
25 years and have, in fact, tried complex actions, including on

1 behalf of media companies, such as ESPN and Walt Disney.

2 My colleague, Jodie, was also a former staff attorney
3 at the FTC, so we have experience on the government side as
4 well.

5 The firm has ample resources to litigate the case
6 efficiently, as we have done in other cases where we have
7 served as lead counsel, including working on name brand
8 prescription drugs, which was, in fact, the largest antitrust
9 settlement to be reached in this district.

10 And, by the way, the prescription drugs matter
11 involved a leadership team of four firms from around the
12 country, including West, East, and Mid-Continent.

13 And so, in sum, you can read our many accolades of our
14 firm in our papers and awards that we've received, as well as
15 the other firms here. But we would suggest that the Court
16 apply our suggested structure of three firms -- East, West, and
17 Mid-Continent -- because that structure will best serve the
18 class as required by Rule 23. And we request that Dan Mogin be
19 appointed, along with his team, to the -- any structure that
20 that Court -- that the Court should choose, and has ample
21 resources to litigate the case on our own or as a part of the
22 team that we propose.

23 So I'm not sure if your Honor has any questions, but
24 thank you for your consideration.

25 THE COURT: Thank you very much.

1 I feel like I'm in an episode of *The Bachelor* right
2 now.

3 (Laughter.)

4 THE COURT: I really do.

5 MS. OLIVER: I would love the honor of a rose, your
6 Honor.

7 (Laughter.)

8 THE COURT: I don't know the show that well to know
9 what that means.

10 (Laughter.)

11 THE COURT: Okay. Come on forward.

12 (Approaching.)

13 MS. SRINIVASAN: Thank you, your Honor. Good
14 afternoon. Kalpana Srinivasan on behalf of Susman Godfrey.
15 And with me is Suyash Agrawal from Massey & Gail.

16 We agree with the Court that this is a case that has a
17 cabin scope. And while the claims here are really important
18 about competition in the market for local advertising, we
19 believe it is a case that's well suited for treatment and
20 handling by a single firm structure with a liaison counsel.

21 It's unlike some of the antitrust MDLs we've seen
22 which involves a ubiquitous product, like a cellphone or
23 multiple different products, and those have compelled larger
24 structures.

25 The reason for proposing a single-firm structure is

1 really three-fold: One, our firm has had extensive experience
2 handling MDLs, as many of the firms here have, and really doing
3 so leanly. I served as co-lead counsel in an antitrust MDL in
4 the Northern District of California against Qualcomm, which we
5 recently certified, involving 250 million class members. We
6 did that with a team of one -- two co-lead law firms and a
7 plaintiff steering committee firm. And, frankly, that involved
8 about, you know, 10 to 15 core lawyers really understanding the
9 case top to bottom.

10 The Court referenced here not being daunted by three
11 million documents, and that -- that is fair. We are not
12 either. That's a case in which we had something like 40
13 terabytes' worth of discovery.

14 But, again, we found that having a centralized team of
15 people who really know the documents, who can effectively
16 depose witnesses, who can argue and prepare briefs, is much
17 better than having a lot of decentralized assignment and work.

18 And by virtue of those -- both that action in which we
19 were coordinated with the Federal Trade Commission's case and
20 the *Auto Parts* MDL in which we work with the Justice
21 Department, and we've had a lot of experience working with
22 those regulatory agencies, and we think it will be extremely
23 important in initially getting the case going on obtaining
24 documents.

25 Beyond the general MDL experience, we have a lot of

1 experience trying to verdict class action cases. Our firm has
2 tried more than a dozen antitrust class actions with over a
3 billion dollars in verdicts.

4 We have also tried the defense side of class action
5 cases to verdict. I myself have tried two defense class
6 actions to their conclusion.

7 Our proposed liaison counsel also brings that
8 experience to the table of being on both the plaintiff and
9 defense side and substantial trial experience. And we really
10 believe that aspect of it. The experience in trying cases
11 affects the entire way in which the case is managed and run.
12 We try all kinds of cases, and not just class actions, but
13 other cases that we may take on a contingency where we bet
14 against ourselves. And what we really try to do is make those
15 as efficient as possible, focusing on the outcome, trying to
16 figure out what the key issues are in the case. And we do so
17 pursuing very large defendants on our own, including Samsung
18 and Apple, the largest banks in the country.

19 And, ultimately, we believe that kind of approach
20 enures to the benefit of the class by having people who really
21 have to know everything and who are very focused on that
22 particular case.

23 We have found it really productive and beneficial to
24 the class in terms of controlling the structure where the Court
25 has limited the leadership to a firm or potentially to two

1 firms and to place specific restrictions and guidance on how
2 work is assigned and how it is billed.

3 Finally, your Honor, a little bit about our plaintiff
4 who is -- you know, purchased political advertising during the
5 class period. We really think that underscores the importance
6 of local advertising in that market and the ability of people
7 to be able to access it and the impact that price competition
8 has on it as well.

9 We are happy to work with other firms if that is what
10 the Court elects, but we do believe this is a case that can be
11 handled efficiently and with a focus on results for the class
12 by a single firm.

13 Thank you, your Honor.

14 THE COURT: Thank you.

15 Oh, you're not going to say anything? You just came
16 up as window dressing?

17 (Laughter.)

18 MS. SRINIVASAN: He's my window dressing.

19 MR. AGRAWAL: I'm happy to be window dressing. And
20 I've always been told that when counsel has said it
21 effectively --

22 THE COURT: Right.

23 MR. AGRAWAL: -- the best thing to do is say nothing
24 at all.

25 THE COURT: Right. I say it all the time on the

1 bench. Okay.

2 So if they're the suitors and I'm picking, then what
3 are you, like, the parents? Making sure --

4 (Laughter.)

5 THE COURT: -- making sure I don't bring in an in-law
6 into the -- into the suit that's going to make a mess out of
7 everything?

8 Okay. Thank you.

9 MS. M. JONES: Good afternoon, your Honor. Megan
10 Jones for Hausfeld, LLP, speaking on behalf of myself, Robins
11 Kaplan, Kessler Topaz, Scharf Banks, and Freed Kanner.

12 THE COURT: Okay.

13 MS. M. JONES: Our submission is at Docket No. 106.

14 THE COURT: Got it.

15 MS. M. JONES: There are many good lawyers in the room
16 today, and what we want to talk to you about is determining the
17 best lawyers for this case.

18 We think there are four reasons. We build MDL teams
19 all the time. We're in some of the largest antitrust cases,
20 some of the most nuanced, in college athletics, not just
21 commodity products. We have experience in antitrust cases.
22 This is what we do.

23 We are prepared to represent a large range of
24 interests. In the cases that we represent, we represent
25 manufacturers that live across the United States. We are

1 prepared to represent this class to the best of our ability
2 regardless of each class member's particular circumstances.

3 We also believe in diverse teams in terms of
4 geographics, capabilities, and gender.

5 We also have been heralded for professionalism by both
6 the bench and the bar. And what we think answers the question
7 most solely in this case about what puts us apart is our
8 professionalism.

9 We have a team that I think is a dream team to lead
10 this case. This Court can trust us to be consistently
11 professional. We are well versed in working on building with
12 teams. We know how to reach consensus with large groups of
13 plaintiffs, which will clearly come into play today. We know
14 how to put together a litigation plan that has diverse and
15 often conflicting points of view. We know how to avoid
16 unnecessary motion practice through strict negotiations on the
17 plaintiffs' side before it gets to you. And we save our
18 conflict on the defense side for the most important legal
19 issues.

20 To make that point stronger, here is what others have
21 said from the bar and publications about us. We are
22 personable. We are highly respected. We are professional
23 problem solvers. We are respected from all contingents. We
24 are well prepared. And we know what's important and what
25 isn't.

1 And lest you think we're merely proficient, they've
2 also said that we're trailblazers, that we're heavyweight
3 practitioners. We are outstanding and savvy. And there are
4 those among us that have been awarded the International
5 Development Award of Distinction and the Antitrust Division's
6 Assistant Attorney General Award of Distinction.

7 So we respectfully submit that this Court should
8 combine our professional and innovative strengths and propose
9 the following structure: Hausfeld as lead counsel, with Robins
10 Kaplan and Kessler Topaz as a member of a two-firm steering
11 committee, with Freed Kanner as liaison counsel.

12 Others do support this, but they do it because they
13 support our judgment.

14 At Docket 115, you'll see their support, which has an
15 express statement that they were not promised work in support
16 of that. And I draw the Court's attention to that.

17 But this is because we -- our team combines decades of
18 antitrust experience. *Blue Cross*, *Air Cargo*, *Interchange*, *VIX*,
19 *Auto Parts*. Hollis Salzman and I have worked together as
20 co-lead counsel multiple times before, and we're a well-known
21 quantity. We have media trial experience. We have a former
22 DOJ antitrust federal prosecutor and trial lawyer. We have a
23 former in-house counsel. We have an electronic discovery
24 specialist that will save this Court time and headache by
25 nuanced negotiations with defendants about what actually works.

1 We have an accomplished local trial lawyer who has been a
2 member of this district's trial bar for 30 years, Ms. Stephanie
3 Scharf. We have a deep and longstanding commitment to
4 diversity and inclusion. We have a liaison counsel that's
5 gotten the top three antitrust settlements in the
6 Seventh Circuit. We have third -- four FBI investigators at
7 our disposal to investigate this industry. And in an express
8 point about how we're working together, our three firms have
9 already sent out, for the benefit of the class, letters to
10 third-party preservation. We've already started working.

11 We know everyone in this room, and we are happy to
12 build teams that make sense. And I have to say that takes a
13 certain temperament with all these points of view, and I'm glad
14 to say we have it.

15 We will allow -- but our lean structure will allow
16 this Court to hold one person responsible, and that would be
17 me. If there's overbilling, if there's overstaffing, if
18 there's over -- too many people at a deposition or a hearing,
19 you have a lean, mean structure that you can call onto the
20 carpet for the lack or to -- of progress in this case or to
21 praise it for what it has done.

22 We can be trusted to lead this case efficiently and
23 help the Court answer questions based on our years of
24 experience.

25 For example, it's premature for counsel right now to

1 be advocating for separate counsel for groups or regions. I'll
2 just shortly say that we don't know the entirety of the class
3 right now. We don't have the make-up, and nor is there a
4 record right now to submit or support subclasses for regions
5 and/or groups of plaintiffs.

6 I will call the Court's attention the -- in one of the
7 cases, the Mayo Clinic was heralded as an amazing plaintiff,
8 and the Court relied upon that in appointing class counsel, and
9 then the Mayo Clinic withdrew and was not included in the
10 amended complaint.

11 And so that's one of the reasons why large clients are
12 not part of the matrix. It's really about the skills of the
13 lawyers, which I think we have.

14 And in terms of the subclasses and the conflicts, I
15 can tell you, every single plaintiff lawyer in this room is
16 highly incentivized to avoid conflicts and get a class cert.
17 upheld in the circuit. And if there is a need for subclasses,
18 there's not a person among us that won't appoint someone.

19 And so Judge Gleason, Judge Koeltl, Judge Robinson, in
20 *Air Cargo*, *BuSpar*, and *Coumadin*, faced the exact same issue
21 that you did about whether they should appoint regional or
22 subclasses, and they chose not to do so. They appointed lead
23 counsel, and let lead counsel determine what was in the best
24 interest of the class.

25 Thank you.

1 THE COURT: Thank you. Okay. Number 5.

2 MR. BARZ: Good afternoon, your Honor.

3 THE COURT: Good afternoon.

4 MR. BARZ: Jim Barz on behalf of Robbins Geller Rudman
5 & Dowd and Scott & Scott, which are seeking to be appointed
6 interim lead counsel. And we're Docket No. 109.

7 So, your Honor, no one factor is dispositive. Each of
8 the candidates has highlighted certain relative strengths. I
9 want to highlight four of ours.

10 First, our two firms are not just plaintiffs' firms,
11 not just class action firms, but specifically antitrust.
12 Leading plaintiff antitrust firms. There are very good defense
13 lawyers on the other side of the table. And I agree with
14 everybody that's gone before me. You've got some pretty good
15 choices here on the plaintiffs' side. But I do think there are
16 differences even amongst the great candidates.

17 We are the largest plaintiffs' class action firm in
18 the country at nearly 200 lawyers. We have a proven track
19 record individually and with the firm we've partnered with in
20 this application, Scott & Scott.

21 Together, our firms in the last several years have
22 settled four separate antitrust class actions and recovered
23 over \$10 billion for the class, including what I believe is the
24 largest class action antitrust settlement ever in *Visa*
25 *Interchange*. It also includes a case called *ISDAfix* antitrust,

1 which we settled last week before Judge Furman in the Southern
2 District of New York. And when I heard your Honor mention that
3 this was your first MDL, I wanted to point out what Judge
4 Furman had said. And it's in our papers. He said last week at
5 the hearing: "This was, I think it is fair to say, probably
6 the most complicated case I have had since I've been on the
7 bench. I cannot really imagine how complicated it would have
8 been if I didn't have counsel who had done as admirable a job.
9 You have done, in my view, an extraordinary service to the
10 class."

11 And that's who we are. And that's not just
12 individually, but working together. We know how to work
13 together cooperatively. And along with other firms, we've done
14 that as well.

15 So you've heard today about various complications.
16 And if I can borrow a TV ad, since it's a TV ad case, you know,
17 I would say that we're like the insurance commercials. We know
18 a thing or two because we've seen a thing or two. So all these
19 different complications --

20 THE COURT: I hope there's no copyright lawyers --

21 (Laughter.)

22 THE COURT: -- in here right now.

23 MR. BARZ: All these complications you've heard
24 about -- different geographies, different types of buyers,
25 direct and indirect -- we've dealt with all these issues. And

1 we believe that we're well capable of simplifying them and
2 crystallizing the disputes for the Court's consideration.

3 So -- and we've also put together -- well, let me turn
4 to my second factor, which is courts when they're assigned an
5 MDL often look to a local presence that can have advantages for
6 the class, such as saving money for time and travel expense,
7 and also the class benefits from having counsel who is familiar
8 with local rules and practice. And that's something that I
9 obviously have. I'm the head of our Chicago office, and I've
10 practiced here my entire year -- for 20 years.

11 We also, your Honor, I would note, have the largest
12 class action settlement after a trial in the Seventh Circuit's
13 history, as far as I know. And that was our case, *Jaffe versus*
14 *Household*. It was tried before Judge Guzman. It was reversed
15 on damages at the Seventh Circuit, reassigned to Judge Alonso,
16 and settled on the morning of trial, before Patrick Fitzgerald
17 nonetheless. And I thought that was a real badge of honor when
18 a client is willing to pay us that type of -- or when the
19 defendants are willing to settle a case for nearly \$1.6 billion
20 rather than go to trial with that stellar of a team. And I
21 think it speaks to our professionalism and our ability to
22 represent the class well here, too.

23 THE COURT: I bet Alonso was happy.

24 (Laughter.)

25 THE COURT: He was very new when he got that case. I

1 don't think he was on the bench but maybe a year, I think.

2 MR. BARZ: I think that's about right.

3 THE COURT: Yes.

4 MR. BARZ: I had a different PSLRA case in front of
5 him which settled, so I think it gave a good -- at least a
6 guidepost up to that point.

7 THE COURT: He was probably grateful.

8 MR. BARZ: And third relative advantage I would
9 highlight is we jointly represent -- Scott & Scott and Robbins
10 Geller -- the diverse members of the class. You've heard a lot
11 today about whether there should be a separate representation
12 for advertising agencies versus the sort of retailers and
13 people just out advertising themselves. We don't think there's
14 a need for two classes. We think they're both just people that
15 are buying ads. But we represent both. We've got Massey
16 Jewelers, which is a local retailer advertising, and we've got
17 Kevin Forbes, who was an advertising consultant and acted a lot
18 of ways like advertising agencies. So we think that puts us in
19 a unique position amongst the candidates to be sensitive to any
20 particular interests amongst all the class members. And we
21 think that factor weighs more in favor than particular size.

22 You heard about size of lawsuits. In the PSLRA,
23 Congress has specifically said we want to give priority to the
24 investor with the largest loss. And I think it speaks volumes
25 that there's no such law passed for antitrust cases because it

1 recognizes that somebody who buys \$100 million worth of ads
2 doesn't necessarily reflect your typical class member. And
3 that's why the Courts have discretion to fashion who they
4 believe for that particular case is best suited.

5 Nothing I've heard so far suggests that you need to
6 appoint multiple counsel to represent various interests. I
7 think if you start to go down that track, you run the risk of
8 parallel litigation inefficiencies. Now the defendants, every
9 time they want to get an answer, they've got to call two
10 separate sets of lead counsel. We think our structure is
11 efficient. It provides one-stop shopping for the Court and the
12 defendants to get their answers.

13 And as Judge Dow in another MDL I'm in front of
14 recently noted, it's an interim appointment. Right? So it can
15 be reconsidered if there's a concrete dispute later on.

16 But at this time, we think -- we agree with those that
17 have advocated a lean structure.

18 I note, your Honor -- I'm not going to go through it
19 because you've heard all our beautiful bios and everything
20 else -- but we've submitted papers, too, that explain the
21 diverse team we have, people with very significant antitrust
22 experience. I've done lots of things, including antitrust
23 cases. Judge St. Eve recently appointed me to the Plaintiffs'
24 Steering Committee in the *DMS Antitrust Litigation* in this
25 court, with Mr. Clifford as liaison counsel. So we've worked

1 well with others. And I think the Court recognizes that we add
2 value in these cases.

3 Finally, your Honor, if there is a last tie-breaker I
4 could offer up, our firm, because of its size and because we
5 specialize in class action cases, I think is uniquely situated
6 amongst the firms, and we actually have the capability to host
7 our documents in-house, and that can represent a significant
8 savings to the class as well.

9 So unless you have any questions, we would rest on our
10 brief and those arguments.

11 THE COURT: Okay. Thank you. I don't have any
12 questions. Thanks very much.

13 (Approaching.)

14 THE COURT: Good afternoon.

15 MS. KLEVORN: Good afternoon. Good afternoon, your
16 Honor. My name is Amanda Klevorn, and I'm with the law firm of
17 Burns Charest, here on behalf of the plaintiff LM SAC, LLC.
18 And I'm speaking on behalf of Mr. Warren Burns' application --
19 he does apologize again, had to leave early.

20 THE COURT: It's not a problem.

21 MS. KLEVORN: And so I will just reiterate what
22 everyone has already said, which is obviously there are many
23 talented attorneys here today who are -- who have the
24 experience and who can capably lead this MDL. And my firm is
25 comfortable resting on our written submission with respect to

1 our lawyers' experience and qualifications.

2 But what we wanted to focus on today is the work that
3 our firm has already put in to developing this case for the
4 good of the proposed class.

5 And I know Mr. Levitt's team earlier mentioned Rule
6 23(g), which provides that the Court should consider the work
7 that an applicant has done to identify potential claims.

8 And our view is that our firm really does stand out in
9 that respect.

10 We did not file a complaint for our client as soon as
11 the *Wall Street Journal* article came out or as soon as the
12 other media, you know, public coverage came out. We actually
13 decided that it was indeed in our client's best interest to
14 examine the case more carefully, and so we expended our own
15 resources to hire our own experts. Those experts spent months
16 looking at data that we acquired on media and advertising
17 pricing issues. And the results of that economic analysis are
18 set forth in our complaint. And that is something that really
19 sets our complaint apart, I think, from most of the other
20 complaints that are on file. And we talked about the results
21 of that economic analysis in our application as well. And the
22 short version is that the work we've done shows that
23 advertisers paid somewhere between 11 to 25 percent higher
24 prices in markets where the Defendant Sinclair and Defendant
25 Tribune both participated.

1 And so that's really -- the primary thing that we want
2 to emphasize here is we put a lot of time and effort and
3 resources into investigating this case, and so we think that
4 really sets us apart from many of the other applicants here
5 today.

6 And I will just conclude on that point. We think that
7 economic analysis, paired with our firm's experience, sets us
8 apart.

9 And so we would respectfully request that Mr. Burns be
10 appointed as interim lead counsel for the proposed class on
11 those bases.

12 THE COURT: Okay. Thank you very much.

13 That was it, right? Six? Did we decide?

14 Oh, we have more? Well, someone said ten, and then
15 someone said six.

16 UNIDENTIFIED SPEAKER: My math was not very good.

17 THE COURT: Oh, so there's ten.

18 UNIDENTIFIED SPEAKER: No, nine.

19 THE COURT: Nine. Okay. Go ahead.

20 MR. WILLIAMS: Hi. I'm Steve Williams, Joseph Saveri
21 Law Firm. I'm responsible for that bad math.

22 I, along with the Gustafson Gluek firm and Wexler
23 Wallace, have moved for appointment. We represent Holmen
24 Locker & Meat Market, Dozier Law Firm, Gibbons Ford, Curb
25 Appeal, and Hoglund Law Firm.

1 This is one of my least favorite parts of the practice
2 because all of us get up and tell you how we're so much better
3 than everyone else.

4 THE COURT: It's such a fashion show I haven't seen
5 before.

6 MR. WILLIAMS: It's very awkward.

7 THE COURT: It is, indeed, an oddity in law.

8 MR. WILLIAMS: Yes, it is.

9 I think that of the attorneys who are in this room,
10 not the firms, but the attorneys who are asking the Court to
11 appoint them to lead, no one has led more federal antitrust
12 class cartel classes than I have. I began doing this in 1997.
13 I've done it consistently since then. I've had more
14 appointments to lead those types of cases than anyone here.

15 I had the privilege of being asked by the Federal
16 Judicial Center to teach federal judges two consecutive years
17 the law of antitrust --

18 THE COURT: I haven't taken his class, just in case
19 anyone is wondering.

20 (Laughter.)

21 MR. WILLIAMS: We missed you.

22 This year I taught the law of Horizontal Restraints,
23 which is an issue in this case. I've been co-lead counsel with
24 virtually every firm that's in this room. And the reason I
25 talk about the experiences, this is going to be a somewhat

1 complex case. I think it is going to benefit the Court and
2 it's going to benefit the class to have someone who has been
3 through a lot of antitrust cases and know this -- the types of
4 issues that arise.

5 And as one primary example is this issue of who has
6 the claims and is there a conflict. And, respectfully, I think
7 that some are going over this a little too easily.

8 I, at the American Antitrust Institute conference in
9 Washington, D.C. last week, I spoke on this topic. This is a
10 very important issue. And, in fact, the Supreme Court a week
11 from today is going to hear a case that might change this rule.

12 This Court should have counsel who know those rules
13 intimately.

14 You heard about the *Air Cargo* case, and you heard a
15 suggestion that the lawyers should figure that out. Well, I
16 agree with what the Court said earlier, that the lawyers are
17 here to solve problems for the Court. And I will do that. But
18 I was in *Air Cargo*, as was the Kaplan Fox firm. That didn't
19 work out quite as easily. Mid-case the parties had to retain
20 outside mediators and arbitrators to allocate between them what
21 would happen to the funds that were being recovered. That
22 shouldn't have to happen if problems are looked at
23 prospectively.

24 And to that end, I want to modify what our proposal
25 is, because I've read the proposal of the Kaplan Fox firm.

1 Ms. Katcher is going to come up after me. I've worked with
2 Kaplan Fox. I know Ms. Katcher. She's an outstanding
3 attorney. I think they have identified a good point here. And
4 I would recommend to the Court that our proposal -- Gustafson
5 Glick, my firm, with Wexler as liaison -- join with Kaplan Fox.
6 Maybe the issue never arises, as some of the attorneys have
7 told you. But my view would be you're better protected to have
8 someone who is put in charge of dealing with that issue so it's
9 addressed prophylactically instead of three months or six
10 months from now when there are fights about who is the right
11 party to be in a complaint. And I think that that would be an
12 outstanding way to address this. The Kaplan Fox firm is
13 excellent. I've worked with them. We could work in a
14 structure like that.

15 They will speak for themselves, but that would be what
16 I would suggest to the Court.

17 In terms of the suggestions about size of plaintiffs,
18 I think as counsel have made clear, that's not a consideration
19 in an antitrust case. It's not a PSLRA case. It happens
20 occasionally.

21 But, really, the primary question for the Court is who
22 is best going to represent the class.

23 I've told you about my experience.

24 The Gustafson Gluek firm presently is handling a case
25 before Judge Durkin in this district, an MDL antitrust class

1 case, where they have just completed protective orders,
2 deposition protocols, ESI protocols, discovery practice,
3 Rule 26(f) conferences. They just did that. They have a
4 template from that case that they could bring here, and we
5 could get those things done quickly.

6 And, finally -- though it's somewhat off the point --
7 this morning you heard a lot about how there's really no case
8 here. I know we're not deciding motions to dismiss yet, but I
9 do want to respond to some of the points you heard from defense
10 counsel by telling the Court what Makan Delrahim, the head of
11 Antitrust at the DOJ, said about the case, which was, quote:
12 "The unlawful exchange of competitively sensitive information
13 allowed these television broadcast companies to disrupt the
14 normal competitive process of spot advertising in markets
15 across the United States. Advertisers rely on competition
16 among owners of broadcast television stations to obtain
17 reasonable advertising rates, but this unlawful sharing of
18 information lessened that competition and thereby harmed the
19 local businesses and the consumers they serve."

20 Those are the issues for whoever you pick to litigate
21 in this case, but they're certainly not settled issues.

22 Thank you, your Honor.

23 THE COURT: Okay. Thank you very much.

24 Number 8?

25 MS. KATCHER: I believe that's me.

1 THE COURT: That's you. You had a preview of coming
2 attractions, right?

3 MS. KATCHER: I will adjust the mic.

4 Good afternoon, your Honor.

5 THE COURT: Good afternoon.

6 MS. KATCHER: I appreciate Mr. Williams' words. And I
7 would like to say right off the bat that Kaplan Fox does not
8 believe that only advertising plaintiffs should be represented
9 in the structure.

10 We're happy to work with Mr. Williams, who is an
11 excellent lawyer, who we've worked with on many cases before,
12 or -- or any of the others. I think you have an embarrassment
13 of riches and a hard decision before you. But certainly we
14 think that both the main types of plaintiffs in this case
15 should be at the table, should be the individual businesses --
16 in one case a political campaign who buy advertising directly
17 from the TV markets -- from the TV stations, as well as the
18 advertising agencies, who, it's my understanding, make the
19 majority of the purchases in this market. I'm not ready -- I
20 have heard some numbers, but I don't want to represent the
21 exact figure in court until I'm sure. But I think nobody in
22 this court would disagree with the fact that a substantial
23 amount of the purchases are made through advertising agencies.

24 And just a little bit about my client and why they are
25 an appropriate plaintiff and should be represented in the

1 leadership. They are based in Buffalo, New York. They've been
2 in business, in the advertising agency business, for about 30
3 years, three decades. They have 80 employees, so they are not
4 an insignificant business. They are what's known as a
5 full-service advertising agency. Like other fields,
6 advertising agencies vary in scope of what they do. Crowley
7 and Webb considers itself a full-service practice, which means
8 they do everything from purchasing the advertising, spot
9 advertising, to planning their clients' media budgets, to
10 planning it out, where the dollars should be spent, digital
11 versus television, and then doing the creative work if the
12 client would like, actually composing the commercials, doing
13 market research. It would vary with the needs of the client.
14 They make a lot of their purchases in the New York media -- the
15 DMA, which is actually different than Buffalo. New York is the
16 Number 1 market. Buffalo is smaller. 53. Chicago is Number
17 3, by the way. But they do, like, again, law firms and other
18 businesses, they do whatever the client before them is
19 interested in doing. So there's a diversity of DMAs there.

20 Some of their clients -- they have a website,
21 www.CrowleyWebb.com, and they tout clients that your Honor and
22 the people in this courtroom would have heard of: M & T Bank,
23 Dunkin Donuts, Merck, Bristol-Myers Squibb, and Wilmington
24 Trust.

25 In addition to the issues that have come up here and

1 have been explored a bit in the preview, as you have put it,
2 there's -- there's a practical reason to have an advertising
3 agency in the mix in a case like this. They're an ongoing
4 feature of this industry. In these conspiracy cases, the
5 plaintiffs' side is at a built-in informational advantage.
6 It's the defendants who know the business, who know -- who have
7 all the facts that we hope to get discovery about. But we
8 often represent purchasers who that's all they did, they made
9 the purchase.

10 Our client has an insight based on their 30 years in
11 the industry of how it works. They're familiar with the
12 players, not just the defendants, but Cox and Katz, the reps of
13 the defendants that have come up in some of the DOJ pleadings
14 as having featured in the conspiracy as well. And so they
15 offer a way for lead counsel to educate themselves in a way
16 that perhaps a smaller plaintiff, although they have perfectly
17 valid claims, doesn't have the same insight into.

18 Some of the actual risk of not -- of conflict -- it
19 may be a conflict. We don't know at this stage of the case.
20 But just as when we're lawyers, we try to deal with foreseeable
21 conflicts at the time they appear. Some of the things that
22 were said today indicate where the tension is.

23 For example, Bon-Ton noted that it does purchase -- at
24 least some of its advertising it purchased through advertising
25 agencies, but it characterized the contracts as something

1 called cost-plus contracts. Cost-plus -- the terms "cost-plus
2 contracts" and "agency" has particular meanings in antitrust
3 law that don't necessarily correspond with our common
4 understanding of what they are. And it's -- there's case law
5 that develops just in interpreting those terms. And you need
6 to have counsel for the different parties to a contract like
7 that, to a representation like that, at the table to
8 sufficiently determine you're doing the best for the class as a
9 whole.

10 *Air Cargo* has come up repeatedly today. My firm was
11 lead counsel as well in that case. There was four co-leads, by
12 the way, none of which were picked through an offered
13 structure. The judge there actually perceived some upcoming
14 tensions within the class and pretty wisely just picked four
15 counsels and made them co-equal co-lead counsels, and the
16 result of that was a \$1.25 billion benefit to the class. So it
17 worked out just fine.

18 But one thing in *Air Cargo* that occurred later in the
19 case -- Mr. Williams talked to you about something that
20 happened early in the case -- later in the case, after one of
21 the last settlements was approved, when we moved for
22 distribution of the funds, someone challenged the distribution
23 saying that they were a direct purchaser and they had been
24 improperly excluded from the class. And our argument -- we
25 represented, as four of the five lead plaintiffs were -- were

1 entities called freight forwarders, who, much like an
2 advertising agency, included the purchase of cargo services as
3 part of a range of services they offered to their customer, and
4 also represented in that lead structure was a customer who
5 bought directly --

6 THE COURT: Okay. You're going to have to try to wrap
7 it up.

8 MS. KATCHER: Oh, I'm sorry.

9 But the point was we were able to successfully deal
10 with the challenge because we had the representation amongst
11 the leads who were there, and they were at the table. And we
12 had a satisfactory result for the clients.

13 I won't -- I have to wrap it up, so I'm not going to
14 talk about myself. It's all in the papers --

15 THE COURT: It's in the paper --

16 MS. KATCHER: Thank you very much.

17 THE COURT: Okay. And last, but not least, are we --
18 uh-oh, it's Mr. Clifford. We're never going to get --

19 (Laughter.)

20 MR. CLIFFORD: Okay. Well, that's a good intro.

21 Good afternoon, your Honor.

22 THE COURT: Good afternoon.

23 MR. CLIFFORD: Robert Clifford. And our submission is
24 under Docket 122.

25 THE COURT: Thank you.

1 MR. CLIFFORD: Your Honor, I have the enviable task of
2 being the caboose here instead of the lead. And he who speaks
3 last will speak least.

4 You know, as your Honor knows, historically this is
5 not my normal book of business. And it has started, actually,
6 I think for me with the 9/11 case when --

7 THE COURT: Right.

8 MR. CLIFFORD: -- Judge Hellerstein made me liaison
9 counsel of the litigation there. And we were successfully able
10 to conclude for, you know, a couple billion dollars, and then
11 most recently being lead counsel in the *State Farm* litigation
12 before Judge Herndon, which is a case that is up for a fairness
13 hearing in the middle of December. But as of today, and the
14 time limit has expired, we only had one objector, which we
15 think and take as a testament to the idea of how we ran a case
16 like that.

17 And, frankly, I think there are a lot of parallels
18 because what I've observed in this area of practice is that the
19 more decentralized you are in your leadership team, the less
20 efficient it's going to be for the class.

21 Now, whether you've -- you've heard a lot of advocacy
22 here today for one lead, and I can certainly embrace that idea.
23 And I think our team, with Mr. Cuneo and Ms. Sims and
24 Ms. McNulty, works well in putting that together for the Court
25 because we're the ones with the indirect claims, with -- with

1 some direct claims there, but unlike the retailers and the
2 advertisers here, we're uniquely situated to, I think, put
3 together for the Court a leadership team that would be on
4 multiple tracks that would accommodate all of the interests and
5 deal with all of these tensions that you kind of sense from the
6 paperwork.

7 And I think particularly here -- you know, you've
8 heard from some very good lawyers today, whether it's
9 Ms. Jones, Mr. Levitt, of -- all the people that you've heard,
10 they're quality lawyers. But certainly one of the ways that I
11 think our group would distinguish itself for your Honor would
12 be to prepare this case for trial and do it with a view that
13 maximizes the efficiencies for getting the case ready for
14 trial. Because that's what will motivate, if there's ever to
15 be a resolution in this case, it's going to be because the case
16 can be put together, presented to a jury in a hot, fast,
17 efficient way that would be managed by the Court as you direct.

18 So, you know, on one track, if you're going to -- if
19 you're predisposed to make multiple co-lead appointments,
20 certainly we would ask, as we have said in our papers, that you
21 consider that with us as the indirect lead, including our
22 individual clients, direct claims that they have. I think
23 there are others out there like that.

24 But if you were to focus on one lead counsel in a
25 traditional, with a liaison having what I think is an advantage

1 to the Court, local counsel, local firms, that would be here
2 and be accountable to you on a regular sustained basis. You
3 won't have to yell out the door like -- Mr. Levitt is not that
4 far away, and neither, you know, are some of the other people.
5 And you have all good people before you, Judge.

6 THE COURT: Okay. Thank you very much.

7 MR. CLIFFORD: Thank you.

8 THE COURT: Gentlemen and ladies, over here, you don't
9 have anything to say on this, right? You just watch the
10 fashion show and hope that I marry the right person.

11 (Laughter.)

12 THE COURT: Okay. I don't have time to go further
13 with you because I have a full docket for the rest of the day.

14 So thank you very much for your presentations. And
15 you'll hear from me shortly.

16 Thank you.

17 (Proceedings adjourned.)

18 C E R T I F I C A T E

19 I certify that the foregoing is a correct transcript of the
20 record of proceedings in the above-entitled matter.

21
22 /s/ GAYLE A. McGUIGAN
23 Gayle A. McGuigan, CSR, RMR, CRR
24 Official Court Reporter
25

November 26, 2018
Date